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**CENTRALIZATION OF THE FORMING OF NATIONAL AND REGIONAL REGULATIONS, IS IT POSSIBLE?****Rachmat Trijono**

Faculty of Law lecturer, Djuanda University, Bogor

Email: [lkpi.179@gmail.com](mailto:lkpi.179@gmail.com)

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**ABSTRACT :** The forming of regulations in the executive domain is still carried out by institutions spread across various ministries and non-ministries. For this reason, it is necessary to do research of the centralization of the formation of national regulations and regional regulations. The aim of this research is describing centralization national and regional regulations forming. This research is descriptive analytical that aimed at expressing a problem or situation or event as it is so that it can reveal the actual facts. Data types that used in this study is secondary data and primary data. All data is analyzed by qualitative analysis method. The results of the study indicate that the establishment of a legislative ministry can unite the formation of national regulations and regional regulations so as to avoid overlaps and will formed harmonization of national regulations and regional regulations. This research further suggests to establishing ministry of legislation.

**Keywords :** National Regulation, Regional Regulation, Ministry of Legislation

**INTRODUCTION**

Until now there are 42,000 national regulations and regional levels owned by the Indonesian state. This condition makes Indonesia obese in regulation.<sup>1</sup> Tens of thousands of regulations are a combination of regulations such as laws, Government Regulations, Presidential Regulations, and Presidential Decrees, Ministerial Regulations, Governor Regulations, Mayor Regulations, and Regent Regulations.<sup>2</sup> Indonesia is experiencing problems with obesity of regulation. This is a very serious problem for the nation. It reduces nation productivity and national development. In addition, obesity of regulation make Indonesia to be the lowest ranking in various assessments in the international world. The regulatory quality

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1 Glery Lazuardi Pramono Anung Usulkan Lembaga Pembentuk Peraturan Perundang-undangan, <http://www.tribunnews.com/nasional/2018/11/28/pramono-anung-usulkan-lembaga-pembentuk-peraturan-perundang-undangan?page=2>, diunduh hari Senin 11 Pebruari 2019.

2 *Ibid.*

index or quality regulation index issued by the World Bank in 2016, was published in Indonesia at number 93 out of 193 countries. This rating is lower than some other countries in the ASEAN region. Moreover, there are four things that hold hostage in the country. First, the quality of the setting is low. Second, the number of settings is too much. Third, consider the understanding of regulators. Fourth, without a single authority.<sup>3</sup> Regional regulations are one of the things highlighted in Indonesia forming regulation. This is caused every provincial and district/ city government is given the authority to regulate its area by issuing regional regulations. In Chapter VI concerning the Regional Government the 1945 Constitution of the Republic of Indonesia Article 18 gives authority to the regional government mentioned in paragraph (6) that the regional government has the right to stipulate regional regulations to implement regional autonomy. The rules regarding the authority of the regional government do not mean an absolute matter, because the relationship of authority between the center and the regions that pays attention to the specificity and diversity of regions is also further regulated in the Act as mentioned in Article 18A. The 1945 Constitution also gives the central government the role of authority to synergize with regional governments in regulating regulations at the provincial and district/ city level.

What policy should be taken to deal with regulatory issues, for synchronizing every legal problem that arises and to create regulations that do not overlap?

### **Research Methods**

This research is descriptive analytical that aimed at expressing a problem or situation or event as it is so that it can reveal the actual facts.<sup>4</sup> Data types that used in this study is secondary data and primary data. Secondary data which consists of Primary Legal Materials such as the 1945 Constitution of the Republic of Indonesia, Law Number 12 of 2011 concerning Regulation Forming, Presidential Regulation Number 87 of 2014 concerning Implementing Regulation of Law Number 12 of 2011 concerning Regulation Forming. The secondary legal material such as books, literature, papers, journal, and the tertiary data such as Kamus Bahasa Indonesia. Secondary data collection was carried out using the literature approach method, which is a library research. Primary data obtain from interview with Dr. HamdanZoelva, Dr. WiciptoSetiadi, Dr Moch. IsnaeniRamdhan. Data analysis in this study used qualitative analysis.<sup>5</sup>

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3 *Ibid.*

4 HardariNawawi, *MetodePenelitianSosial*(Yogyakarta, Gajahmda Press, 1993), p. 31.

5 Anselmus Strauss and Juliat Corbin, *Basic of Qualitative Research, Grounded Theory Procedure and Thechnique*, (New Delhi: Sage Publication, 1979), 17. About qualitative research Lexy J Moleong have a book *Metodologi Kajian Kualitatif*, PT Remaja Rosdakarya, Bandung, 1989; Also John W Creswell, *Research Design: Qualitative & Quantitative Approaches*, Sage Publication, Thousand Oaks, London, New Delhi, 1994; Robert Bogdan and Steven J. Taylor, *Introduction to qualitative Research Methods: A Phenomenological Approach To The Social Science*, A Willey-Interscience Publication, New York London Sydney Toronto, 1975; Michael Quinn Patton, *Qualitative Evaluation And Research Methods*, Second Edition, Sage Publication, Newbury Park London New Delhi, 1980.

## Discussion

### 1. The Function of Forming National Law

Management of the laws and regulations forming has been regulated on the Act Number 12 of 2011 concerning Regulation Forming. Management of regulation forming are the stages of planning, drafting, discussing, ratifying or stipulation, and promulgating.<sup>6</sup> Management of forming the legislation and national regulations can be described as follows:

**Table 1**  
**Management of Establishment of National Regulation**

|                                  | <b>Law</b>   | <b>Government Regulation in Lieu of Law</b>  | <b>Government Regulation</b>   | <b>Presidential Regulation</b>  |
|----------------------------------|--|--|--|---|
| <b>Planning</b>                  | National Legislative Program <sup>7</sup>  | The minister whose duties and regulated in the Government Regulation in Lieu of Law <sup>8</sup> | The Minister prepares the drafting of Government Regulations planning <sup>9</sup>                             | Minister prepares the planning for drafting of Government Regulation <sup>11</sup>                                |
| <b>Arrangement</b>               | Legislation Bill <sup>13</sup> , harmonization <sup>14</sup>                           | Coordinate with the Minister and the minister / leader of the relevant institution <sup>15</sup> | Program for Government Regulation drafting <sup>10</sup> Initiator, <sup>16</sup> harmonization. <sup>18</sup> | Program for drafting a Presidential Regulation <sup>12</sup> Initiator, <sup>18</sup> harmonization <sup>19</sup> |
| <b>Discussion</b>                | The People's Representative Council is in partnership with the President <sup>20</sup> | Coordinate with the Minister and the minister / leader of the relevant institution <sup>21</sup> | Coordination Meetings <sup>22</sup>  | Coordination meetings <sup>23</sup>   |
| <b>Endorsement / stipulation</b> | The President's signature, <sup>24</sup> no signature 30 days <sup>25</sup>            | President <sup>26</sup>  | President <sup>27</sup>  | President <sup>28</sup>   |
| <b>Promulgation</b>              | Minister who organizes government affairs in the field law. <sup>29</sup>              | Minister who organizes government affairs in the field law. <sup>30</sup>                        | Minister who organizes government affairs in the field law. <sup>31</sup>                                      | Minister who organizes government affairs in the field law. <sup>32</sup>   |

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<sup>6</sup> Indonesia, *Undang-Undang*, Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-undangan (Lembaran Negara Tahun 2011 Nomor 82, Tambahan Lembaran Negara Nomor 5234)

At the planning stage, each Ministers / institutions conduct research, make Academic Manuscript, and make Drafts of Law. This is in accordance with Act Number 12 of 2011 Article 1 Number 11 and Article 47 (1). Article 1 Number 11 determines that the Academic Manuscript is a research result text or legal study and other research results on a particular problem that can be scientifically accountable for regulating the problem in a Draft of Law, Draft of Provincial Regulation, or Draft of District/ City Regulation as a solution to the problems and legal needs

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- 7 Indonesia, Undang Undang, Undang Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan (Lembaran Negara Tahun 2011 Nomor 82, Tambahan Lembaran Negara Nomor 5234) (Jakarta, 2011). Article 16.
  - 8 Indonesia, “Peraturan Presiden Republik Indonesia Nomor 87 Tahun 2014 responsibilities include the material to be Tentang Peraturan Pelaksanaan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan” (2014). Article 58 Paragraph (1)
  - 9 Ibid. Article 27 Paragraph (1)
  - 10 Indonesia, Undang Undang, Undang Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan (Lembaran Negara Tahun 2011 Nomor 82, Tambahan Lembaran Negara Nomor 5234). Article 24.
  - 11 Indonesia, “Peraturan Presiden Republik Indonesia Nomor 87 Tahun 2014 Tentang Peraturan Pelaksanaan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan.” Article 31 Paragraph (1)
  - 12 Indonesia, Undang Undang, Undang Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan (Lembaran Negara Tahun 2011 Nomor 82, Tambahan Lembaran Negara Nomor 5234). Article 30.
  - 13 Ibid. Article 47 Paragraph (2)
  - 14 Ibid. Article 47 Paragraph (3)
  - 15 Indonesia, “Peraturan Presiden Republik Indonesia Nomor 87 Tahun 2014 Tentang Peraturan Pelaksanaan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan.” Article 58 Paragraph (2)
  - 16 Indonesia, Undang Undang, Undang Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan (Lembaran Negara Tahun 2011 Nomor 82, Tambahan Lembaran Negara Nomor 5234). Article 54 Paragraph (1)
  - 17 Ibid. Article 54 Paragraph (2)
  - 18 Ibid. Article 55 Paragraph (1)
  - 19 Ibid. Article 55 Paragraph (2)
  - 20 Ibid. Article 65 Paragraph (1)
  - 21 Indonesia, “Peraturan Presiden Republik Indonesia Nomor 87 Tahun 2014 Tentang Peraturan Pelaksanaan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan.” Article 58 Paragraph (2)
  - 22 Ibid. Article 29 Paragraph (1)
  - 23 Ibid. Article 31
  - 24 Indonesia, Undang Undang, Undang Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan (Lembaran Negara Tahun 2011 Nomor 82, Tambahan Lembaran Negara Nomor 5234). Article 73 Paragraph (1)
  - 25 Ibid. Article 73 Paragraph (2)
  - 26 Ibid. Article 1 Number 4
  - 27 Ibid. Article 1 Number 5
  - 28 Ibid. Article 1 Number 6
  - 29 Ibid. Article 85
  - 30 Ibid. Article 85
  - 31 Ibid. Article 85
  - 32 Ibid. Article 85

of the community. Article 47 (1) determines that the Draft of Law submitted by the President is prepared by the minister or the head of a non-ministerial government institution in accordance with the scope of his duties and responsibilities. Thus, the function of each ministry / institution is a planner in the construction of legislation that starts from research or assessment, making academic papers and regulation bills. Likewise, the function of the Ministry / Institution in the creation of Government Regulations and Presidential Regulations is as a planner.

At the drafting stage, on preparing the Draft Law, ministers or leaders of relevant non-ministerial government institutions form inter-ministerial committees and / or between non-ministries. Harmonization, rounding, and consolidation of conception The draft of law originating from the President is coordinated by the minister who organizes government affairs in the field of law. In this drafting phase, the formation of laws, government regulations and presidential regulations was carried out in harmony.

In the discussion stage, in the discussion of the Draft of Law carried out by the House of Representatives together with the President in the discussion of Government Regulations in lieu of the Law coordinating with the Minister and ministers / leaders of the relevant institutions. In resolving Government Regulations and Presidential Regulations carried out in coordination meetings.

The stage of ratification or stipulation is carried out by the President, and the final stage of the enactment is carried out by the Minister of Law and Human Rights.

## **2. The Function of Forming Regional Regulation**

The function of forming regional regulation at the planning stage, carried out in the Regional Legislation Program (Prolegda). The role of the Ministry of Home Affairs is to control the preparation of Regional Regulations (Perda). Even before the regional regulation was passed, there was a process of prior consultation with the Ministry of Home Affairs. Consultation is carried out on Provincial Regulations and District / City Regulations. The stages of establishing legislation in the regions are parallel with the stages of establishing of national regulation, which are briefly presented in the following table:

**Table 2**  
**Management of Establishment of Regional Regulation**

|                                 | <b>Province Regional Regulation</b>  | <b>District/ City Regional Regulation</b>   |
|---------------------------------|--|---|
| <b>Planning</b>                 | Province Regional Legislation Program. <sup>33</sup>   | District / City Regional Legislation Program <sup>34</sup>  |
| <b>Arrangement</b>              | Regional Regulation Bill from Governor, <sup>35</sup> Academic Manuscript, <sup>36</sup> Harmonization <sup>37</sup> | Regional Regulation from Regent/ Mayor, Academic Manuscript, Harmonization <sup>38</sup>              |
| <b>Discussion</b>               | The Province People's Representative Council is in partnership with Governor <sup>39</sup>                           | the Regent/ Mayor People's Representative Council is in partnership with Regent/ Mayor. <sup>40</sup> |
| <b>Endorsement/ stipulation</b> | Governor, <sup>41</sup> not signed 30 days to be a Regional Regulation. <sup>42</sup>                                | Regent/ Mayor not signed 30 days to be a Regional Regulation. <sup>43</sup>                           |
| <b>Promulgation</b>             | Minister <sup>44</sup>   | Regional Secretary. <sup>45</sup>   |

Preparation of Provincial Regulations is carried out in the Provincial Legislation Program, and planning for the preparation of District/ City Regulations is carried out in the District/ City Legislation Program. The planning function of the Provincial Regulation is carried out by the Provincial People's Representative Council and the Provincial Government, and the planning function of the District/ City Regional Regulation is carried out by the District/ City People's Representative Council and the Regent/ City Government.

33 Ibid. Article 39.

34 Ibid. Article 63.

35 Ibid. Article 32.

36 Ibid. Article 56 Paragraph (2)

37 Ibid. Article 58 Paragraph (2)

38 Ibid. Article 63

39 Ibid. Article 75 Paragraph (1)

40 Ibid. Article 77

41 Ibid. Article 78 Paragraph (1)

42 Ibid. Article 79 Paragraph (2)

43 Ibid. Article 80

44 Ibid. Article 85

45 Ibid. Article 86 Paragraph (3)



In the executive domain, the Provincial Regional Regulation Bills comes from Governor and the District / City Regional Regulations comes from the Regent/ Mayor.

### **3. Legislation Centralizing**

Indonesia is a legal state based on Pancasila, so that all government actions must be based on legislation that comes from Pancasila values. Such prepositions require material and formal consistency in every statutory regulation both at the Central and Regional governments.

Table 1 and table 2 above shows the management of making national and regional regulations. The forming of regulations in the executive domain is still carried out by institutions spread across various ministries and non-ministries.

In the practice of law forming, the institutions that play a role also carry out quality control in addition to the Directorate General of Laws and Regulations, the Ministry of Law and Human Rights, namely the Ministry of State Secretariat or the Cabinet Secretariat. Often happens, the draft of law that has gone through the harmonization process in the Directorate of Harmonization of Laws and Regulations is still being discussed again at the Ministry of State Secretariat or Cabinet Secretariat. As a result, there are still many laws and regulations even though they have gone through a "quality control" process but still overlap, lead to conflict, disharmony or with extreme terms the legislation produced is still of poor quality.<sup>46</sup> According to Simabura, it was time for legal matters related to regulatory arrangements to be weaned in a separate ministry.<sup>47</sup> So, the compatible ministry is Ministry of Legislation.

According to Ramadhan that the establishment of a legislative ministry is a national need for the realization of state goals within the framework of an integrated government system based on: aspects of functional relations between state institutions based on mutual proportional assistance between the President, People's Representative Council and Regional Representatives Council in the formation of legislation.<sup>48</sup> In South Korea the National Legislation Center organization is also in the form of a ministry, namely Ministry of Government Legislation (Ministry of Legislation).<sup>49</sup> The establishment of the Ministry of Legislation is a breakthrough in the completion of legislation by integrating all discussions stage of each Ministry/ Non-Ministry Government Institution. By integrating the formation of national regulations in the Ministry of Legislation, the management of the forming of National Regulations can be described as follows:

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46 Wicipto Setiadi, "Simplifikasi Peraturan Perundang-Undangan Dalam Rangka Mendukung Kemudahan Berusaha" 7 (2018) p. 325-326.

47 Charles Simabura, "Desain Lembaga Penata Regulasi" (Jakarta: Kompas, Senin 4 Maret, 2019).p.6.

48 Interview on Friday 3 May 2019.

49 Korean, "Ministry of Government Legislation," 2019, <http://www.moleg.go.kr/english/history>.

**Table 3**  
**Management of forming National Regulations After the Ministry of Legislation**

|                                | <b>Law</b>  | <b>Government Regulation in Lieu of Law</b>   | <b>Government Regulation</b>  | <b>Presidential Regulation</b>   |
|--------------------------------|---|---|---|--|
| <b>Planning</b>                | National Legislative Program  | the minister whose duties and responsibilities include the material to be regulated in the Government Regulation in Lieu of Law | - The Minister prepares the drafting of Government Regulations planning<br>- Program for Government Regulation drafting | - Minister prepares the planning for drafting of Government Regulation <sup>50</sup><br>- Program for drafting a Presidential Regulation |
| <b>Arrangement</b>             | Legislation Bill Harmonization by the Ministry of Legislation   | Ministry of Legislation   | Harmonization by the Ministry of Legislation  | Harmonization by the Ministry of Legislation   |
| <b>Discussion</b>              | The People's Representative Council is in partnership with the President represented by Ministry of Legislation | Ministry of Legislation coordination with the related Ministries and related institutions.                                      | Coordinating meeting by Ministry of Legislation   | Coordinating meeting by Ministry of Legislation  |
| <b>Endorsement/stipulation</b> | The President's signature, no signature 30 days   | President   | President   | President  |
| <b>Promulgation</b>            | Minister who organizes government affairs in the field law.   | Minister who organizes government affairs in the field law.   | Minister who organizes government affairs in the field law.   | Minister who organizes government affairs in the field law.  |

50 Indonesia, "Peraturan Presiden Republik Indonesia Nomor 87 Tahun 2014 Tentang Peraturan Pelaksanaan Undang-Undang Nomor 12 Tahun 2011 Tentang Pembentukan Peraturan Perundang-Undangan." Article 31 Paragraph (1)



The table above shows the management of forming National Regulations after the Ministry of Legislation. The table describe that all of the National Regulation on the arrangement stages should through the Ministry of Legislation, and on the discussion stages, for law should discuss by the People's Representative Council in partnership with the President represented by Ministry of Legislation. The function of Ministry of Legislation on making Government Regulation in Lieu of Law, Government Regulation and Presidential Regulation is as a meeting coordinator.

By integrating on Ministry of Legislation, the management of the formation of Regional Legislation can be described as follows:

**Table 4**  
**Management of Forming Regional Regulation After**  
**Establishment of Ministry of Legislation**

|                                 | <b>Province Regional Regulation</b>   | <b>District/ City Regional Regulation</b>   |
|---------------------------------|---|---|
| <b>Planning</b>                 | Province Regional Legislation Program.  | District / City Regional Legislation Program  |
| <b>Arrangement</b>              | Regional Regulation Bill from Governor, Academic Manuscript, Harmonization on Ministry of Legislation | Regional Regulation from Regent/ Mayor, Academic Manuscript, Harmonization on Ministry of Legislation |
| <b>Discussion</b>               | The Province People's Representative Council is in partnership with Governor                          | The Regent/ Mayor People's Representative Council is in partnership with Regent/ Mayor.               |
| <b>Endorsement/ stipulation</b> | Governor, not signed 30 days to be a Regional Regulation.   | Regent/ Mayor not signed 30 days to be a Regional Regulation.   |
| <b>Promulgation</b>             | Minister  | Regional Secretary.   |

Table 4 above shows the management of forming Regional Regulation after Ministry of Legislation establishment. The table describes that the arrangement stage of forming Regional Regulation, specialization of harmonization is doing by Ministry of Legislation. According to the data above that legislation can be centralizing on the Ministry of Legislation.

## Concluding Remarks

The forming of Ministry of Legislation as a solution of overlapping of regulation, disharmonies of regulations. Ministry of Legislation have the integration functions of forming regulation in the national and regions, Integration of legislative discussions stage of each ministry / agency. Planning for the formation of the Act starts from research, assessment, formation of Academic Scripts and drafting of the Law. The drafting phase of the Act is carried out by the Ministry of Legislation. The role of the Ministry of Home Affairs in controlling the drafting of regional regulations will be carried out by the Ministry of Legislation, with a mechanism before the regulation is passed, there is a process of prior consultation with the Ministry of Legislation. The discussion phase to forming of law is carried out by the President represented by the Ministry of Legislation together with the House of Representatives.

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